

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Triple Five of Minnesota, Inc.,
a Minnesota corporation,

Civ. File No. 99-1894 (PAM/JGL)

Plaintiff,

v.

ORDER

Melvin Simon; Herbert Simon; Randolph Foxworthy; Melvin Simon & Associates, Inc., an Indiana corporation; Si-Minn Limited Partnership, an Indiana limited partnership; Si-Minn, Inc., an Indiana corporation; David Simon; Simon Property Group, Inc., a Delaware Corporation; Simon Property Group L.P., a Delaware limited partnership; MS Management Associates, Inc., an Indiana corporation; Simon Management Associates, Inc., an Indiana corporation; Mall of America Associates, a Minnesota general partnership; MOAC Limited Partnership, a Minnesota limited partnership; Mall of America Company, a Minnesota general partnership; Minntertainment Associates, a Minnesota general partnership; Minntertainment Company, a Minnesota general partnership; MOAC Mall Holdings LLC; MOA Land Holdings LLC, MOA Entertainment Company LLC; and Does 1 to 20;

Defendants.

A court may appoint a special master pursuant to Federal Rule of Civil Procedure 53 if circumstances warrant. The Court, believing the issues in this action are of a complicated nature, finds that it is appropriate to appoint a special master in this matter.

Accordingly, **IT IS ORDERED** that:

Ronald E. Lund is appointed special master pursuant to Federal Rule of Civil Procedure 53 in this matter, Civil File No. 99-1894 (PAM/RLE). He will receive correspondence at the following address: Briggs & Morgan, 2200 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402, and can be reached by telephone at 612-977-8597.

a. The special master is authorized to perform the duties assigned to him by this Court's Order of September 10, 2003, and is further authorized to perform any ancillary acts required to fully carry out those duties.

b. The special master will act as trustee for the constructive trust imposed by this Court's Order of September 10, 2003, on that portion of the Mall of America purchased by Defendant Simon Property Group LP ("SPG") on or about October 15, 1999.

c. The special master shall make the determinations required by this Court's Order of September 10, 2003, and shall submit a report and recommendation to the Court on the same. Those determinations include:

1. A determination of the "net profits received as a result of SPG's ownership interest in the Mall of America from the 1999 transaction to the present, including profits received from the sale of a portion of the Met Center site to IKEA" as well as the stub period income and tenant allowance reserve funds that are owed to Triple Five (Order at 28);
2. A determination of Triple Five's reasonable attorneys' fees and costs incurred in prosecuting this matter;

3. A determination of “the extent [to which] any Mall partnership paid Defendants’ attorneys’ fees and costs in this matter” and the amount of those fees, 50% of which must be reimbursed to the entity that paid the fees and costs.

d. The special master shall supervise a full financial accounting from Mall of America Associates, Mall of America Company, Mall of America Company L.P., Mall of America Company Mall Holdings LLC, Mall of America Entertainment Company LLC, Mall of America Company Land Holdings LLC, Mall of America Investors I, Inc., Minntertainment Associates, Minntertainment Company, Mall of America JV Property LLC, Mall of America Enterprises Property LLC, Mall of America Enterprises, Inc., Mall of America Investment LLC, and any other Mall entities or entities associated with the Mall, as necessary to provide a full financial accounting. The special master shall determine the timing of financial disclosures from these entities and may order these entities or any of Defendants to provide to him all documents or other information necessary to complete the accounting.

e. The special master may hire accountants, real estate consultants, attorneys, or others as necessary to assist him in carrying out his duties under this Order.

f. The special master is authorized to conduct hearings, call meetings of the parties, and to do all acts necessary to properly perform his duties under this Order, pursuant to Fed. R. Civ. P. 53.

g. The special master shall be compensated at the rate of \$400.00 per hour. Additionally, the parties shall pay the usual and customary rates for work which the special

master delegates to others. Compensation of the special master shall be apportioned as follows: 50% shall be paid by Plaintiffs and 50% shall be paid by Defendants. No portion of the compensation should be withdrawn by either party from Mall entities.

h. Appeals from orders of the special master shall be briefed and reviewed on an expedited basis. An appealing party shall file its appeal and supporting documents within five days of the special master's order, unless the special master or the Court set a different briefing schedule. Any memoranda and documents in opposition shall be filed within five days after the appealing party's papers have been filed.

i. The party who files objections to a report of the special master shall bear the costs of production of a transcript of the proceedings before the master if required for this Court's review.

j. To the extent the applicable standard of review and procedures for review are not specifically provided by Fed. R. Civ. P. 53, this Court shall review the report and recommendations of the special master and appeals of orders of the special master under the same standards and procedures set forth in 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72, and Local Rule 72.1 for review of a report and recommendation or order of a United States Magistrate Judge.

Dated: September 30, 2003

S/ Paul A. Magnuson

Paul A. Magnuson

United States District Court Judge